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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 44

LATHAM CASTLE, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, ET AL.,

Petitioners,

vs.

HAYES FREIGHT LINES, INC.,

Respondent.

ON CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF OF THE AMERICAN AUTOMOBILE ASSOCIATION, INC., AS AMICUS CURIAE.

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FOREWORD.

In the belief that a brief and argument from the viewpoint of the motoring public would be helpful to the Court in the study of this case we have prepared this brief. In a word, we suggest that the law here in question is but a legitimate means of enforcing the police power of the sovereign state, and was exercised to protect the public highways from destruction and thus to contribute to the safety of all citizens using the public ways and to facilitate the flow of all highway commerce, both interstate and local.

We suggest that the State of Illinois built the roads in question, has the duty to maintain and police them, and that they are not a federal responsibility. In the course of time they have been built, repaired, and rebuilt,—each time to carry heavier and heavier loads; and we respectfully suggest that until the Federal Government shall have taken over the proprietorship of the state highways, their upkeep and repair, and have taken over the exercise of police powers over them, to protect them against destruction the state must function as the proprietor and bear that responsibility.

We suggest also that one having formal federal permission to carry merchandise through state borders gets no *carte blanche* to truck as he pleases. He is subject to federal regulation, so far as it goes, and to proper state regulations which are not repugnant to the federal regulation, which do not discriminate against interstate commerce, and which do not unduly burden such commerce. He must, as he enters another state, obey its laws uniformly governing all vehicles to promote safety and the conservation of its highways, in the absence of any conflicting federal rule to which he is subject. It is the duty of the owner of such a truck, in loading, to observe a proper margin of safety as to weight, with an eye always on the marginal line, claiming no preference or immunity because his trip begins in one state and ends in another. The permit or certificate issued by the Interstate Commerce Commission cannot operate as a license to destroy the state highways. The state may protect the highways against unreasonable wear and tear, uniformly penalizing all who violate, and may impose adequate sanctions, without discrimination against interstate commerce, to deter the habitual violations which hasten pavement destruction.

We make the following suggestions:

I.

Damage to Highways From Overweight of Heavy Vehicles Threatens the Continued Existence of the Road Facilities Over Which All Highway Commerce Moves. Congress Has Recognized That This Problem Is for the States to Solve, Even Though Other Separate Problems Touching Upon Interstate Commerce By Highway Vehicles Have Been Entrusted to a Federal Agency.

(a) Federal Investigation Has Established the Fact That Overloaded Vehicles Are Destroying the Highways.

(b) Part II of the Interstate Commerce Act Does Not Regulate in This Field Nor Authorize a Federal Agency to Regulate With Respect to This Problem, but Leaves the Solution to the States.

(a) Federal Investigation Has Established the Fact That Overloaded Vehicles Are Destroying the Highways.

The American Automobile Association appears in this case because it is deeply interested on behalf of its 4,500,000 members and their families, and the motoring public generally, in supporting the efforts of the states to cope with the serious and difficult problem of enforcement of laws regulating the weight of motor vehicles. That this is a serious and difficult problem admits of no doubt. In hearings before the Subcommittee on Domestic Land and Water Transportation of the Committee on Interstate and Foreign Commerce of the United States Senate, pursuant to Senate Res. 50, 81st Congress, 2nd Session, Thomas H. MacDonald, Commissioner, U. S. Bureau of Public Roads, said in June, 1950 (pp. 980-981):

> "Observations of damage unquestionably attributable to excessive axle loading have been reported with increasing regularity by highway authorities all over the country. Circumstantial proof of the cause is found in the fact that the damage is occurring where heavy weights are known to be present and is not oc-

curring on roads of lighter traffic; it is occurring on the outer lanes of four-lane pavements where trucks move in greatest numbers and not on the inner lanes where automobiles pass trucks; in many instances it is observed to occur on the sides of roads known to be traveled by heavily loaded out-bound vehicles and found to be absent on the other sides used by the same vehicles returning light. But such circumstances only confirm the judgment of cause that competent observers are able to form from the nature of the damage itself. Load damage of highways of various types has characteristic forms that are distinguishable from the forms of damage resulting from other causes.

* * * * *

"In 1931, such excessive loads were occurring on no more than eight axles in each thousand trucks. Today, as previously stated, there are about 86 such excessive loads for each thousand vehicles; and, truck traffic volumes having increased about threefold in the interval, the increase in frequency of excessive loading has been of the order of 8 to 250, or over thirty-fold. In view of this increase of loading above the general design limits, the probability that traffic loads are today an important factor in the causation of road damage is at least as great as the probability that they were a minor factor in 1931. And the probability of present road damage is confirmed as an actuality by the widespread and numerous reports of such damage.

"The evidence of serious road damage caused by excessively heavy axle loads is now abundant and irrefutable."

It is to be kept in mind that Congress has refused to place upon the Federal government any responsibility for enforcement of laws designed to preserve the lives of highways by limiting the weight of motor vehicles. Although Congress has recognized that this is a major problem, it has so far expressly committed resolution of this problem to the states. *Maurer* v. *Hamilton*, 309 U. S. 598. The

issue in this case must be considered in the light of this express action of Congress.

It must also be considered in the light of the problem facing the states, its importance and its magnitude. No citation of authority is needed to demonstrate that highway building, financing, maintenance, and protection of public safety on the highways, constitute a major, integrated, problem. The annual Conference on Street and Highway Safety convened each year by the President of the United States, the recent proposals of the President for the expenditure of vast sums for highway improvement, the annual shocking death and injury toll on the highways, are matters of common knowledge.

The role of the heavy vehicle in this problem was summarized in part in the Annual Report of the Bureau of Public Roads, Department of Commerce, for fiscal year 1953, as follows (pp. 35-36):

> "Overall costs of freight transportation by highway include the cost of owning, maintaining, and operating trucking equipment, and such costs of constructing and maintaining highway facilities as may properly be assigned to freight vehicles. *Trucking costs diminish as the size and weight of vehicles increase, but highway costs increase.*" (Emphasis supplied.)

Loading of vehicles above the lawful limits, by damaging the highway surface, increases the costs of the highways and renders the highways less safe to travel. The ordinary motorist has a direct interest in the adequate enforcement of laws designed to protect the highways by limiting the weight of vehicles.

The damage caused by loading beyond legal limits was described by Mr. MacDonald in the above cited hearing. He was there referring to damage caused by exceeding the axle load limit of 18,000 pounds common to most states, including Illinois. It will be remembered that respondent

seeks to excuse its multiple violations by the claim that they were principally overloading of axles beyond the 18,000 pounds limit. Mr. MacDonald said that such violations were the principal cause of highway failure. Here is his description of the damage so caused (p. 980):

> "In concrete pavements the occurrence of diagonal corner cracking, cracks extending inward from the slab edges partially across the slab, major criss-cross cracking and certain types of cracks, either approximately longitudinal or approximately transverse, and shattered areas proceeding from initial crack formation are almost invariably indicative of load failure. The pumping of water from the joints of concrete pavements has been found to be associated with presence in the traffic stream of vehicles having axle loads in excess of about 14,000 pounds. When pumping occurs, subgrade material of certain types may be carried in suspension in the water with resulting loss of subgrade support of the pavement. This action is almost invariably associated with the presence of heavy axle loads in frequent repetition.
>
> "On bituminous and other flexible types of surface, load damage is indicated by the formation of longitudinal ruts and certain types of waving showing, and corrugation of the surface, by the formation of pot holes, and by breakdown of the pavement edges. Damage, not always superficially evident, occurs in the form of an excessive internal fragmentation and attrition of the mineral aggregate of the pavement or surface.
>
> "Observation of these forms of damage leaves no doubt that road damage caused by overloaded trucks has in recent years grown to alarming proportions."

It is beyond question that one of the major problems facing Illinois and other states is adequate enforcement of truck weight limits in order to preserve the highways.

(b) Part II of the Interstate Commerce Act Does Not Regulate in This Field Nor Authorize a Federal Agency to Regulate With Respect to This Problem, but Leaves the Solution to the States.

It is equally clear that Congress has recognized this enforcement problem to belong entirely to the states and has carefully refrained from attempting to enact any solution of its own, even with respect to the interstate truck traffic which, in many details, may be made subject to federal jurisdiction.

The federal legislation under which respondent claims its right to engage in interstate commerce (Part II of the Interstate Commerce Act, 49 U. S. C. 301, *et seq.*) expressly reserved to the states the right to enforce, as to interstate carriers, the sanction provided in Section 132.02 of the Illinois law.

The Supreme Court of Illinois held the act invalid solely as to the interstate operations of motor carriers authorized to operate under Part II of the Interstate Commerce Act. But the Court overlooked the significance of that provision of Part II which directed investigation of the need for federal regulation in the field and thus expressly reserved to the states the power which Illinois is here attempting to exercise.

Part II of the Interstate Commerce Act, under which appellee claims the right to engage in interstate motor carrier operations, provides (sec. 226, 49 U. S. C. 325):

> "The Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles * * *."

This provision was considered by the Supreme Court of the United States in *Maurer* v. *Hamilton*, 309 U. S. 598, and the Court discussed its legislative history quite extensively. Relying upon this provision and its legislative

history the Court held valid a statute of Pennsylvania which banned absolutely from the highways vehicles which had been expressly authorized to operate by the Interstate Commerce Commission under Part II of the Interstate Commerce Act.

The Court quoted and obviously relied upon for authority in reaching its decision the following statements, explaining the above quoted section 226, from the testimony of Joseph B. Eastman before the Senate Committee on Interstate Commerce while the Committee was considering the legislation which became Part II of the Interstate Commerce Act. Mr. Eastman was the chief author of the legislation and was a member of the Interstate Commerce Commission and Federal Coordinator of Transportation. He said (309 U. S. pp. 608, 609):

> "But on this question of sizes and weight of motor vehicles which is an extremely important matter from the standpoint of public safety and convenience, there is not only the question here as to what those sizes and weights ought to be from the standpoint of road construction and road use, but there is also the legal question as to whether the Federal government can exercise power over the matter or whether it is a matter exclusively within the jurisdiction of the states. It was because of doubts not only as to the facts with reference to that matter, but also to the law that provisions were made for this investigation."
>
> "With respect to size and weight of vehicles • • • we do not undertake in this bill to cover that situation except to provide for a thorough investigation of it by the Commission with recommendations to Congress because there is involved not only a question of fact as to what the regulation should be, but also as to how far the federal government has power to interfere with the exercise of the police power of the states with respect to the use of their highways. They have the right to protect their highways against

> unsafe or unreasonable use, but whether or not the federal government can come in and interfere with it I cannot say at this time."

Maurer v. *Hamilton*, *supra* (309 U. S. 598), was decided in 1940, but Congress has made no attempt since then to impair the power of the states relating to the regulation of the sizes and weight of motor vehicles.

The motor carrier involved in *Maurer* v. *Hamilton* had been granted a certificate of public convenience and necessity by the Interstate Commerce Commission to operate as an interstate motor carrier, just as has appellant in the instant case. Further, after a hearing the Commission held that the vehicles affected by the Pennsylvania statute could be lawfully operated pursuant to such certificates despite the state law. But the Court held that the state had the absolute and unfettered right to ban the vehicles in question from its roads, by reason of the reserved power in the state which Congress had not attempted to disturb.

In *South Carolina* v. *Barnwell Bros.*, 303 U. S. 177, the Court held valid a state law limiting the total gross weight (weight of vehicle and load) of a single vehicle or combination of vehicles to 20,000 pounds, despite the admitted fact that the law prevented many interstate motor carriers from conducting *any* operations in the state.

In discussing the state's power the Court made a statement of particular significance here. The motor carriers objected that the 20,000 pounds gross weight limitation was a wholly irrational method of preventing damage to the roads. They presented evidence that wheel and axle weights were the critical factors in pavement damage and not gross weight, and that the roads could be better protected by wheel and axle weight limitations which at the same time would not deny to the carriers the use of their vehicles that was denied by the 20,000 pounds gross weight

law. Admitting for purpose of argument the soundness of this contention, the Court nevertheless held the 20,000 pounds gross limitation valid simply *because it was easier to enforce* than a wheel or axle weight limitation. The Court said (303 U. S. pp. 192-3):

> "* * * The choice of a weight limitation based on convenience of application and consequent lack of need for rigid supervisory enforcement is for the legislature, and we cannot say that its preference for the one over the other is in any sense arbitrary or unreasonable. * * *"

Illinois could by statute ban all vehicles with a gross weight of more than 20,000 pounds, and that would prevent appellant from conducting any operations at all. By thus keeping the big motor carriers off the highways the state could avoid the evils of overloaded trucks. But the state has not as yet elected to pursue such a drastic remedy. Instead it permits motor carriers to carry loads which are sufficiently large to permit an economic business operation, but it has conditioned its permission to carry such loads on strict compliance with the law. It has just as much right to exercise its reserved powers to protect its highways in that fashion as the states had in the exercise of the powers considered in the *Maurer* and *Barnwell* cases. In those two cases the states imposed an absolute, perpetual ban; in the instant case the ban is for only ninety days. And the ninety days prohibition is applied only to a carrier who has demonstrated by its conduct a clear intention to defy the state's reasonable truck weight requirements. *Maurer* v. *Hamilton*, *supra* (309 U. S. 598), and *South Carolina* v. *Barnwell Bros.*, *supra* (303 U. S. 177), carefully read, are clear authority to sustain the Illinois statute.

So also are the earlier cases, decided before Part II of the Interstate Commerce Act was enacted. In *Sproles* v.

Binford, 286 U. S. 374, a Texas statute was held valid which limited the *net load* which could be carried on a vehicle or combination of vehicles to 7,000 pounds. The reason assigned for validity was *ease of enforcement*.

In *Morris* v. *Duby*, 274 U. S. 135, an order of the Oregon Highway Commission reduced the permissible truck gross weight (vehicle and load) from 22,000 to 16,500 pounds. This order and the Oregon statute under which it was made were held valid, despite the undisputed evidence that it would ban certain interstate trucking operations. The Court said (274 U. S. p. 144):

> "The mere fact that a truck company may not make a profit unless it can use a truck with a load weighing 22,000 or more pounds does not show that a regulation forbidding it is either discriminatory or unreasonable."

In the Oregon case the State Highway Commission permanently banned certain motor carrier traffic as a means of conserving the state's roads. That action was held valid. In this case the ban is for only ninety days, and applies to only one carrier.

It is clear from these cases that the state has the power exercised in the Illinois act to protect its highways from damage, and it is further clear that Part II of the Interstate Commerce Act, under which respondent claims the right to operate in interstate commerce, has reserved that power to the state.

II.

This Is a Declaratory Action Involving Only the General Validity of the Suspension Provisions of the Act. The Courts Have Adequate Power Under the Act to Deal With Individual Cases to Avoid Injustices. Therefore Respondent's Argument as to the Effects of the Act in Individual Cases Is Not Relevant Here. There Is Involved Here Only the Question Whether the Suspension Provisions Are Valid When the State Makes a Proper Case Under the Statute.

Respondent has agreed that the suspension provisions of the statute are somehow invalid because they may in individual cases not now before the Court impose some unwarranted hardship. A great deal could be said in answer to that, but it is sufficient here to note that this is a declaratory action involving only the general validity of the suspension provisions of the statute. In a suspension proceeding under the statute, which this is not, the court hearing such proceeding is governed, among other things, by the following provision designed to safeguard the rights of motor carriers:

> "* * * In any proceeding brought under this section, the court shall not find that a defendant has habitually operated one or more commercial vehicles in violation of Section 131 of this Act unless and until the court shall have considered the evidence to the contrary, if any, offered by the defendant, and such evidence may include, but shall not be limited to, evidence relating to the character and gravity of such violations and the extent of the operations of commercial vehicles by or on behalf of such defendant upon the public highways of this state which did not involve any such violations." Sec. 132.02 (g).

Thus in a suspension proceeding, which must be brought in order to suspend a motor carrier's operating rights, a defendant motor carrier is not automatically adjudged properly fit for suspension, but he can, on the contrary, show cause why even multiple violations do not constitute due cause for suspension. He is entitled to a full hearing. It cannot be presumed in the instant case that, in other cases, he will not receive a fair hearing or that the courts will not enter judgments required by particular facts.

Therefore respondent cannot argue here matters which should be addressed to a court in a suspension proceeding. It may well be that the rights of some motor carriers may not be suspended by the courts after hearing all of the evidence. The statute is clearly and carefully designed to provide for consideration by the courts of each individual case.

The only issue that is before the Court in this proceeding is whether the suspension provision is *prima facie* valid under the Commerce Clause. Once that issue is determined, the issue whether the operating rights of a particular motor carrier shall be suspended must be considered upon a full hearing of the merits. In such further proceedings the various arguments advanced by respondent may become pertinent, but they are not relevant here.

III.

The Decision of the Supreme Court of Illinois Is Squarely in Conflict With H. P. Welch Co. v. New Hampshire, 306 U. S. 79.

It is respectfully suggested that the decision of the Supreme Court of Illinois is squarely in conflict with the decision of this Court in *H. P. Welch Company* v. *New Hampshire*, 306 U. S. 79. In that case Welch Company

was operating in interstate commerce as a motor common carrier under authority of the (Federal) Motor Carrier Act, 1935 (49 Stat. 543), now Part II of the Interstate Commerce Act (49 U. S. C. 301, *et seq.*, 54 Stat. 919). It also did an intrastate business in New Hampshire, but 99 per cent of its business over the New Hampshire roads was interstate. In 1937 it permitted its drivers on several occasions to operate its vehicles longer continuous hours than permitted by the New Hampshire laws. For these offenses the New Hampshire Public Service Commission suspended its right to operate over the New Hampshire highways in interstate and intrastate commerce for five days, under the provisions of a New Hampshire statute. This Court sustained this state action as valid under the Commerce Clause and the 14th Amendment.

It will be noted that in every significant particular the *Welch* case is similar to the instant case. Welch and Hayes were operating in interstate commerce pursuant to the authority of Part II of the Interstate Commerce Act. Each violated state laws intended for the safeguarding of highway traffic. At the time Welch violated the New Hampshire hours of service law there was no Federal regulation of hours of service. At the time Hayes violated the Illinois truck weight laws there was no Federal regulation of truck weights, nor is there any now. *Maurer* v. *Hamilton*, 309 U. S. 598. Because there was no Federal regulation of hours of service at the time Welch violated the New Hampshire laws this Court held that the state had the right to invoke its penalty of suspension despite the fact that Welch was operating in interstate commerce under the authority of what is now Part II of the Interstate Commerce Act. Since there is now no Federal regulation of weight or size of vehicles of interstate carriers, the *Welch* case, in principle, is precise authority to sustain the suspension provisions of the Illinois statute.

The Supreme Court of Illinois attempted to distinguish the *Welch* case (306 U. S. 79) by saying that the case "strongly suggested that this power of the State would be superseded when the Federal Motor Carrier Act became effective." (R. 60.) Obviously the Illinois Court did not differentiate, as did this Court, between the *existence* of the power of the federal government to put into force a regulation conflicting with state law, and the *exercise* of such power. When this Court in the *Welch* case spoke of the possible supersession of state law by Federal action it was referring *only* to *possible* supersession of the state hours of service law by Federal regulation of hours of service. Thus this Court assumed "without so deciding" that "when the federal regulations take effect they will operate to supersede the challenged provisions of the state statute." (306 U. S. p. 84.) But this Court held that until the Federal regulations of hours of service became effective the state had the power to punish multiple violations of its own laws on the subject by barring from its roads for five days a carrier operating in interstate commerce under authority of Part II of the Interstate Commerce Act. This Court *did not hold* that the existence of Part II of the Interstate Commerce Act superseded the state power; it held exactly the contrary. Paraphrasing the Court's reasoning in the *Welch* case, since there is no Federal regulation of weight of vehicles, the action of the State of Illinois in suspending the right of an interstate carrier for multiple violations of the Illinois weight laws, has not been superseded by any Federal action.

IV.

The Decision of the Illinois Court Is Not in Accord With Bradley v. Public Utilities Com., 289 U. S. 92, and McDonald v. Thompson, 305 U. S. 263.

It is respectfully suggested that the decision of the Supreme Court of Illinois is not in accord with the decisions of this Court in *Bradley* v. *Public Utilities Commission of Ohio*, 289 U. S. 92, and *McDonald* v. *Thompson*, 305 U. S. 263.

In the *Bradley* case, the state commission denied Bradley, a motor carrier, the right to operate in interstate commerce over an Ohio highway on the basis of its finding that the road was already so congested that the addition of Bradley's vehicles would create undue traffic hazard. This Court held this action valid despite the claim that it violated the Commerce Clause. The point to be kept in mind in connection with the *Bradley* case is that in two earlier cases this Court had held that the states lacked the power to deny interstate operating authority upon economic grounds, that is, upon considerations of public convenience and necessity. (*Buck* v. *Kuykendall*, 267 U. S. 307, and *Bush* v. *Maloy*, 267 U. S. 317.) In distinguishing the *Bradley* case from the two earlier cases this Court said (289 U. S. p. 95):

> "In those cases, safety was doubtless promoted when the certificate was denied, because intensification of traffic was thereby prevented. * * * But there promotion of safety was merely an incident of the denial. Its purpose was to prevent competition deemed undesirable. The test employed was the adequacy of existing transportation facilities; and since the transportation in question was interstate, denial of the certificate invaded the province of Congress. In the case at bar, the purpose of the denial was to promote safety;

and the test employed was congestion of the highway. The effect of the denial upon interstate commerce was merely an incident."

Thus, before the (Federal) Motor Carrier Act of 1935 was enacted the states had no power to deny interstate operating authority upon economic grounds because that "invaded the province of Congress" even during a period of Congressional inaction. But, as shown by the *Bradley* case, the states could deny interstate authority upon grounds of safety. The enactment of the Motor Carrier Act in 1935 simply gave to the Interstate Commerce Commission a power which up to then neither states nor federal government had possessed, the power to grant or deny interstate motor carrier authority upon economic grounds. But that act did not take from the states their already existing rights to deny interstate authority on grounds of safety, at least not until Congress shall have tried to take over a particular field of safety occupied by the states. *Welch* v. *New Hampshire*, *supra* (306 U. S. 79). Congress, instead of trying to assume the power to regulate weights and sizes of motor vehicles, has recognized that power to be in the states. *Maurer* v. *Hamilton*, 309 U. S. 598. And it is entirely clear from *Welch* v. *New Hampshire* that the states' reserved power to control the weights and sizes of vehicles of interstate carriers can be exerted in the form of a suspension of the right to operate on the states' highways for multiple violations of weight restrictions.

In *McDonald* v. *Thompson*, *supra*, 305 U. S. 263, this Court held that Texas could bar McDonald from operating on Texas roads in interstate commerce *after* the (Federal) Motor Carrier Act, 1935, was enacted, because of his violation of Texas laws in 1934. The violation consisted of operating in interstate commerce after the state had forbidden the operation on the ground of highway congestion.

V.

The National Transportation Policy Requires Federal Co-operation With the States, Not Denial of State Powers, at Least in the Absence of Specific Supersession by Congress.

We respectfully suggest that the Supreme Court of Illinois erred in holding that the enactment of the Motor Carrier Act, 1935, 49 Stat. 543, now Part II of the Interstate Commerce Act, 54 Stat. 919, 49 U. S. C. 301, *et seq.*, and the National Transportation Policy, 54 Stat. 899, 49 U. S. C., preceding Sec. 1, superseded the power of the State of Illinois to enforce the statute in issue as to interstate carriers.

In enacting what is now Part II of the Interstate Commerce Act Congress left to the states the power to enforce regulation of size and weight of motor vehicles operated in interstate commerce. *Maurer* v. *Hamilton*, 309 U. S. 598. This power can be exercised even though it results in barring permanently in one state the use of certain vehicles in interstate commerce which are lawful in other states. *Maurer* v. *Hamilton, supra; South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177; *Morris* v. *Duby*, 274 U. S. 135.

The general statements of the National Transportation Policy cannot affect the specific language of Section 226 of the Interstate Commerce Act, 49 U. S. C. 325, which provides in part:

> "The Commission is authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles. * * *"

In *Maurer* v. *Hamilton, supra*, 309 U. S. 598, the Court held that this language exhibited the will of Congress that at

least until there should be some action by Congress in the field of sizes and weight regulation, the power to regulate that subject remained in the states.

Indeed the general statements of the National Transportation Policy lend support to the view that the national interest would be best served by effective enforcement of state laws designed to preserve the highways from destruction. The enumerated items in the National Transportation Policy are expressed to be "all to the end of developing, coordinating and *preserving a national transportation system by* water, *highways*, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." (Emphasis supplied.)

Since Congress has expressly refrained from entering the field of regulation of sizes and weight of interstate motor vehicles, the states are left free to protect their investments in highways by laws enacted for that purpose. The Illinois statute in question should not be declared invalid on its face and in the absence of any showing that it will be enforced arbitrarily and oppressively. The provisions in the act for full hearing are adequate to insure that the state will use the statute only to the extent actually necessary to safeguard its highways.

Conclusion.

Rather than burdening interstate commerce, the Illinois Act facilitates it. By penalizing those who repeatedly commit the offense which destroys highways the state law encourages conduct which will preserve the roads so that they may provide the avenues over which both interstate and local traffic may move. It seems apparent that those truck owners who, by their overloading of vehicles, contribute to pavement damage, impose a tremendous burden on inter-

state commerce by destroying the instrumentality which serves such commerce, and that a law designed to reduce such a burden affects interstate commerce, if at all, only beneficially.

We conclude that the State of Illinois can rightfully penalize the continual, repeated and habitual operations of overweighted conveyances over its highways by temporarily suspending the permit to operate as here done; and that the opinion of the Supreme Court of Illinois should be reversed and cause remanded for further proceedings.

Respectfully submitted,

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